

INTRADEPARTMENTAL CORRESPONDENCE

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July 22, 2020
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TO: The Honorable Board of Police Commissioners

FROM: Chief of Police

SUBJECT: UNINTENTIONAL DISCHARGE (NON-TACTICAL) FID NO. 046-19

Honorable Members:

The following is my review, analysis, and findings for Non-Tactical Unintentional Discharge (NTUD), Categorical Use of Force (CUOF), Force Investigation Division (FID) No. 046-19. On June 18, 2020, this case was presented to the Chair of the Use of Force Review Board (UOFRB). I have reviewed and adopted the recommendations from the Chair of the UOFRB for this incident. I hereby submit my findings in accordance with Police Commission policy.

SUMMARY¹

On September 29, 2019, at approximately 0732 hours, Officers W. Wheat, Serial No. 43788, and J. Davila, Serial No. 39203, Southwest (SOW) Patrol Division, were in full police uniform and in a marked black and white police vehicle assigned to patrol. Officers responded to a backup request for a stolen vehicle. Officer Wheat, in response to the high-risk vehicle pullover, utilized a Department shotgun to provide cover for other officers. At the conclusion of the tactical incident, Officer Wheat attempted to download the shotgun at which time he had a NTUD.

At the time of the incident Officer Wheat was a probationary officer with approximately six months in a field assignment.² Officer Davila had been a Field Training Officer (FTO) for approximately ten months. This was Officers Davila and Wheat's first shift working together as partners.

According to Officer Wheat, at the start of his shift, he checked out their equipment from the SOW Community Police Station (CPS) Kit Room which included an unloaded and *cleared* Department Remington, 870P, 12-gauge shotgun.³ Officer Wheat met Officer Davila by their

¹ The summary and the investigation completed by FID for this incident have been provided to the Board of Police Commissioners.

² Officer Wheat had approximately two years of prior law enforcement experience as a sworn peace officer in the state of Michigan. At the time of the incident, Officer Wheat had been employed for one year with the Los Angeles Police Department (LAPD), which included training in the LAPD Police Academy, and assignment as a probationary officer assigned to SOW Patrol Division.

³ Patrol Equipment – Police vehicle keys, Taser, Bean Bag Shotgun, and DICV Microphones.

assigned police vehicle, where they began to secure the equipment into their police vehicle. Prior to securing the shotgun in the shotgun rack of the police vehicle, Officer Wheat conducted a physical and mechanical assessment of the shotgun. Officer Wheat inspected the *barrel, ejection port, extractor, firing pin, safety button, and shell carrier*. Officer Wheat determined that the shotgun was in proper working order. Upon completion of the shotgun assessment, Officer Wheat loaded the shotgun to the “patrol ready” configuration and secured it in the police vehicle’s shotgun rack.⁴

According to Officer Davila, as she and Officer Wheat *were conducting routine patrol* they responded to a *back-up request for a stolen vehicle* at 4400 South 4th Avenue, where the stolen vehicle was stopped.⁵ While exiting their police vehicle Officer Davila directed Officer Wheat to remove the shotgun from the police vehicle shotgun rack and bring it with him to assist in the high-risk vehicle pullover.⁶

NOTE: The FID investigation determined that two police vehicles were already on scene and had deployed in a high-risk vehicle pullover configuration prior to the arrival of Officers Davila and Wheat.⁷ Upon the arrival of Officers Davila and Wheat, Officer Davila deployed her police vehicle directly behind the primary police vehicle.

According to Officer Wheat, as he exited his police vehicle, he removed the shotgun from the shotgun rack, chambered one shotgun round, which made the shotgun ready to fire. Officer Wheat disengaged the safety and approached the passenger side door of the primary police vehicle with the shotgun in a low-ready position (**Additional Tactical Debriefing Topics – Firearm Manipulations**).⁸

NOTE: The FID investigation review of BWV revealed that while Officer Wheat approached the passenger side door of the primary police vehicle with the shotgun, he momentarily covered another officer with the barrel of the shotgun as he transitioned the shotgun from the low ready position to the on-target position (**Additional Tactical Debriefing Topics – Basic Firearm Safety Rules**).

⁴ Patrol Ready – The condition in which a weapon system is configured with an empty chamber and its magazine is loaded to capacity (LAPD Basic Firearms Manual, Shotgun Section, Chapter 5, Remington 870 Shotgun Manipulations).

⁵ Back-up Unit Request – An emergency radio broadcast when an officer requires the immediate response of additional personnel (LAPD Manual, Volume 4, Section 120.40).

⁶ High-risk vehicle pullover – Any stop which poses a significant risk to the officer when dealing with the occupants of a motor vehicle.

⁷ High-risk vehicle pullover configuration – The configuration of marked black and white police vehicle(s) placement behind a vehicle determined to be of high risk. The initial police vehicle conducting the high-risk pullover is identified as the primary unit. The first additional responding police vehicle is identified as a secondary unit. The Primary unit is positioned in-line behind the suspected high-risk vehicle, while the secondary unit is positioned approximately 6’ – 8’ to the left of the primary unit and at a slight inward angle.

⁸ Low Ready Position – The barrel of the weapon system pointed in a lower position and not on target (LAPD Basic Firearms Manual, Shotgun Section, Chapter 4, Remington 870 Shotgun Positions).

According to the FID investigation, the driver in the stolen vehicle appeared to be unconscious. Officers approached and detained the driver of the stolen vehicle without incident. Officer Wheat provided cover with the shotgun as the officers approached the high-risk vehicle to detain the driver.

According to Officer Wheat, he loaded the shotgun in response to the tactical event. After the driver had been taken *into custody*, Officer Wheat no longer needed the shotgun. As Officer Wheat walked back to his police vehicle to secure the shotgun in the police vehicle shotgun rack, he unsuccessfully attempted to download the shotgun. After multiple failed attempts to download the shotgun, Officer Wheat became *frustrated* and inadvertently disengaged *the safety* of the shotgun. Officer Wheat placed his *finger on the trigger* and applied pressure which caused a single round to be discharged. The round traveled in an upward trajectory **(Unintentional Discharge)**.

Note: Detective A. Rosa, Serial No. 26598, FID, conducted a shotgun round count. The investigation revealed that one round had been fired from the shotgun. Three unspent shotgun rounds were recovered from the magazine tube and one spent shotgun casing was removed and recovered from the receiver.

According to Sergeant F. Robinson, Serial No. 38019, SOW Patrol Division, upon her arrival she exited her police vehicle and began to approach the scene when she heard a *loud boom*. Sergeant Robinson verified that everyone on scene was uninjured. Moments later, Officer Wheat informed Sergeant Robinson that he had inadvertently fired the shotgun, and the round was fired *up in the air*. Sergeant Robinson separated Officer Wheat and obtained a Public Safety Statement (PSS). Sergeant Robinson also *requested an additional supervisor*, delegated *responsibilities* of creating an incident scene log, coordinated canvassing, secured the scene, and *secured the shotgun inside* of her police vehicle.

Note: The FID investigation revealed that Sergeant Robinson and Officer Wheat's BWV remained activated during the PSS **(Additional/Equipment – Protocols Subsequent to a CUOF)**.

According to the FID investigation, Sergeant E. Asawesna, Serial No. 31152, SOW Patrol Division, arrived on scene and assumed the monitoring of Officer Wheat. Sergeant Asawesna transported Officer Wheat to SOW CPS where he continued to monitor Officer Wheat until relieved by Sergeant B. Blocker, Serial No. 27367, SOW Patrol Division, Watch Commander. Sergeant Blocker assumed monitoring responsibilities of Officer Wheat until relieved by FID investigators **(Watch Commander's Daily Report)**.

According to the FID investigation, at approximately 0802 hours, Sergeant Blocker notified the Department Operations Command Center (DOC) of the NTUD **(Additional/Equipment – Protocols Subsequent to a CUOF)**.

According to the FID investigation, FID investigators did not recover any shot pellets or shot pellet fragments. The surrounding area was canvassed for witnesses, damage, and possible victims, of which none were located.

The shotgun was inspected by a Department Armorer. The shotgun was found to be in good mechanical condition. A function test was completed which included loading, downloading, unloading, racking, and a trigger test. The shotgun met Department specifications.

The following personnel were at scene during the NTUD incident; however, they did not witness the incident. Officers J. Rodriguez Serial No. 41267, W. Moore Serial No. 43101, C. Rodriguez Serial No. 43659, A. Cintas Serial No.42431, A. Rodriguez Serial No. 43817, T. Barajas Serial No. 40851, D. Smith Serial No. 42474, D. Lagesse Serial No.42164, M. Mubiala Serial No. 43767 of SOW Patrol Division, and Sergeant Robinson.

FINDINGS

Tactics – Tactical Debrief, Officer Wheat.

Drawing/Exhibiting – Does Not Apply.

Non-Tactical Unintentional Discharge – Administrative Disapproval, Negligent Discharge, Officer Wheat.

ANALYSIS⁹

Detention

Does Not Apply.

Tactics

Department policy relative to a Tactical Debrief is: *“The collective review of an incident to identify those areas where actions and decisions were effective and those areas where actions and decisions could have been improved. The intent of a Tactical Debrief is to enhance future performance” (Los Angeles Police Department Manual, Volume 3, Section 792.05).*

Officer Wheat’s tactics were not a factor in this incident; therefore, they were not reviewed or evaluated. However, Department guidelines require personnel who are substantially involved in a CUOF incident to attend a Tactical Debrief. I have determined that it would be appropriate to recommend a Tactics finding of Tactical Debrief.¹⁰

⁹ The analysis reflects my recommendations as supported by the preponderance of the evidence established by the investigation.

¹⁰ A Tactical Debrief shall be conducted for all CUOF incidents within 90 calendar days of the conclusion of the BOPC review process (LAPD Department Manual, Section 3, Section 792.15).

Tactical De-Escalation

Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a suspect and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation.

Tactical De-Escalation Techniques

- *Planning*
- *Assessment*
- *Time*
- *Redeployment and/or Containment*
- *Other Resources*
- *Lines of Communication (Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques)*

Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

In this case, Officer Wheat was conducting the administrative function of downloading a shotgun after the conclusion of a tactical event. Officer Wheat was no longer engaged in a tactical operation and was attempting to download his shotgun while he walked back to his police vehicle; therefore, Officer Wheat was not evaluated for Tactical De-escalation.

Additional Tactical Debrief Topics

Basic Firearm Safety Rules – Officer Wheat chambered one shotgun round making the shotgun ready to fire as he approached the primary police vehicle. Officer Wheat momentarily covered another officer's back with the muzzle of the shotgun as he transitioned the shotgun from the low ready position to the on-target position. Officer Wheat is reminded of the importance of muzzle control and the Basic Firearm Safety Rules, particularly to never allow the muzzle of a weapon system to cover anything he is not willing to shoot. I will direct that this topic be discussed during the Tactical Debrief.

Firearm Manipulations – Officer Wheat chambered one shotgun round, making the shotgun ready to fire, and disengaged the safety while in the low-ready position and not on target. Officer Wheat is reminded that while handling a shotgun to only disengage the safety when the shotgun is on-target and he intends to shoot. I will direct that this topic be discussed during the Tactical Debrief.

Additionally, after the conclusion of the tactical incident, Officer Wheat stated he disengaged the shotgun safety as he attempted to download the shotgun. Officer Wheat is reminded that the shotgun safety is to remain engaged when the shotgun is being downloaded. I will direct that this topic be discussed during the Tactical Debrief.

Command and Control¹¹

Command and Control is the use of active leadership to direct others while using available resources to coordinate a response, accomplish tasks and minimize risk. Command uses active leadership to establish order, provide stability and structure, set objectives and create conditions under which the function of control can be achieved with minimal risk. Control implements the plan of action while continuously assessing the situation, making necessary adjustments, managing resources, managing the scope of the incident (containment), and evaluating whether existing Department protocols apply to the incident.

Command and Control is a process where designated personnel use active leadership to command others while using available resources to accomplish tasks and minimize risk. Active leadership provides clear, concise, and unambiguous communication to develop and implement a plan, direct personnel and manage resources. The senior officer or any person on scene who has gained sufficient situational awareness shall initiate Command and Control and develop a plan of action. Command and Control will provide direction, help manage resources, and make it possible to achieve the desired outcome. Early considerations of PATROL will assist with the Command and Control process (LAPD, Training Bulletin, Volume XLVII Issue 4, July 2018).

Incident Commander (IC) – In accordance with Department Policy, the IC sets the objectives, the strategy and directs the tactical response. Directing the tactical response means applying tactics appropriate to the strategy, assigning the right resources and monitoring performance (Supervisor's Field Operations Guide, Volume 2, LAPD Emergency Operations Guide).

Sergeant Robinson arrived on scene moments prior to the NTUD. Upon hearing the discharge of the shotgun and being notified by Officer Wheat, Sergeant Robinson requested an additional supervisor to the scene, obtained a PSS from Officer Wheat, separated, and monitored him until relieved by Sergeant Asawesna. Additionally, Sergeant Robinson took possession of the shotgun involved in the NTUD and preserved the evidence in the trunk of her police vehicle for FID investigators. Sergeant Robinson secured the area to preserve investigative integrity and assigned personnel at scene to canvass for possible victims or witnesses to the NTUD.

Sergeant Asawesna assumed the monitoring of Officer Wheat and transported Officer Wheat to SOW CPS where he continued to monitor Officer Wheat until relieved by Sergeant Blocker.

At the time of incident, Sergeant Blocker was the acting Watch Commander, SOW Patrol Division. Sergeant Robinson advised Sergeant Blocker of the circumstances, wherein, Sergeant Blocker directed Sergeant Robinson to obtain and collect statement forms from personnel at scene and to release personnel without being directed by FID.

¹¹ Training Bulletin – Command and Control was adopted by the Department July 31, 2018.

Sergeant Blockers Watch Commander's Daily Report, dated September 9, 2019, did not document the separation and monitoring of Officer Wheat, nor did it document the subsequent supervisor information who assumed the monitoring responsibility of Officer Wheat in relief of Sergeant Asawesna.

Sergeant Blocker notified the DOC and FID of the NTUD and assisted with monitoring duties of Officer Wheat.

The overall actions of Sergeants Robinson and Asawesna were consistent with Department supervisory training and met my expectations of a field supervisor during a critical incident.

The actions of Sergeant Blocker were not consistent with Department supervisory training during a critical incident and did not meet my expectations.

Tactical Debrief

Each tactical incident also merits a comprehensive debriefing. In this case, there were identified areas where improvement could be made. A Tactical Debrief is the appropriate forum for involved personnel to discuss individual actions that took place during this incident.

Therefore, I will direct Officer Wheat and Sergeant Blocker to attend a Tactical Debrief that shall include discussions pertaining to the above Debriefing Topics along with the following mandatory topics:

- Use of Force Policy;
- Equipment Required/Maintained;
- Tactical Planning;
- Radio and Tactical Communication (including Code Six);
- Tactical De-Escalation;
- Command and Control; and,
- Lethal Force.

General Training Update (GTU)

On October 10, 2019, Officer Wheat attended a GTU. All mandatory topics were covered, including Firearms Manipulations.

UNINTENTIONAL DISCHARGE (UD):¹²

Firearms safety is critical. Officers must have the ability to draw, holster and manipulate weapons safely at all times.

¹² LAPD Basic Firearms Manual, Page 1, July 2015.

Basic Firearm Safety Rules

1. *All guns are always loaded.*
2. *Never allow the muzzle to cover anything you are not willing to shoot.*
3. *Keep your finger off the trigger until your sights are aligned on the target and you intend to shoot.*
4. *Be sure of your target.*

Officers are required to know and apply the Basic Firearm Safety Rules throughout their careers. These rules must be ingrained into an officer's natural thought process and become second nature. Any violation of the Basic Firearm Safety Rules may result in the unintentional discharge of a round. This is a serious matter with the potential of having tragic results. For administrative purposes, the unintended discharge of a weapon is classified into two categories:

1. *Accidental discharge: An unintended discharge of a firearm as a result of a mechanical malfunction of the firearm, not involving the shooter.*
2. *Negligent discharge: An unintended discharge of a firearm as a result of a shooter not handling a weapon in a safe manner, violating one or more of the four basic firearm safety rules (Los Angeles Police Department Firearms Manual, July 2015).*

Administrative Disapproval - Negligent Discharge. *Finding where it was determined that the unintentional discharge of a firearm resulted from operator error, such as the violation of a firearm safety rule (Los Angeles Police Department Manual, Volume 3, Section 792.05).*

Officer Wheat – 12-gauge, Department shotgun, one round, in an upward trajectory into the air.

According to Officer Wheat, he loaded the shotgun during the tactical incident. After the driver had been taken in custody, Officer Wheat no longer needed the shotgun. While Officer Wheat walked back to his police vehicle to secure the shotgun, he unsuccessfully attempted to download the shotgun. After multiple attempts to download the shotgun, Officer Wheat became frustrated and inadvertently disengaged the safety of the shotgun. Officer Wheat placed his finger on the trigger applied pressure, which caused a single round to be discharged. The round traveled in an upward trajectory.

Officer Wheat recalled,

"So it was no reason for me to have the shotgun out since the suspect was in custody.¹³ I began to walk – walk back to the vehicle. And as I was walking back to the vehicle, the safety was on. And I had the shotgun up in the air. And as I was walking back, I was hitting the – the release, or access release, to try to get – try to get the shell to come out of the ejection port.¹⁴

¹³ Officer Wheat, Page 18, Lines 10-12.

¹⁴ Officer Wheat, Page 18, Lines 13-18.

*I took the safety and I took the safety off, not realizing, and I believe the reason so being is because I was frustrated -- frustrated that I couldn't get it to work. And my finger went on the trigger and causing a round to go off straight up in the air. I did realize that I did put my finger on the trigger causing the round to go off in the air."*¹⁵

The UOFRB Chair conducted a thorough review in evaluating the circumstances and evidence related to the NTUD. The UOFRB Chair noted that Officer Wheat took full responsibility for the incident during his interview with FID investigators. The UOFRB Chair determined that the NTUD was the result of operator error. Officer Wheat failed to properly download the shotgun and out of frustration disengaged the shotgun safety, placed his finger on the trigger, and caused the shotgun to be fired.

Based on the totality of the circumstances, the Chair of the UOFRB determined, and I concur that the NTUD was the result of operator error as Officer Wheat did not properly download his shotgun utilizing Department trained and approved techniques. Additionally, Officer Wheat failed to adhere to the Basic Firearm Safety Rules, and therefore, requires a finding of Administrative Disapproval, (AD) Negligent Discharge.

INJURIES

There were no injuries as a result of this NTUD.

ADDITIONAL/EQUIPMENT

Sergeant Robinson

Protocols Subsequent to a CUOF – The FID investigation revealed that Sergeant Robinson and Officer Wheat's BWV remained activated during the PSS and were not deactivated until the PSS was completed. This issue was brought to the attention of Captain J. Shah, Serial No. 34245, Commanding Officer, SOW Area, who advised that this issue was addressed through divisional training and the generation of a Supervisory Action Item (SAI), The Commanding Officer of Operations – South Bureau (OSB) and the Director of the Office of Operations (OO) concurred with this action. As such, I deem no further action is necessary.

Sergeant Blocker¹⁶

Protocols Subsequent to a CUOF – Sergeant Blocker directed Sergeant Robinson to obtain statement forms from all personnel at scene including Officers Wheat and Davila, without being given direction by FID to do so.

¹⁵ Officer Wheat, Page 20, Lines 13-19.

¹⁶ At the time of incident Sergeant Blocker had 29 years of police service and had been assigned to SOW Patrol Division for approximately one year and eight months. During the course of his supervisory career, Sergeant Blocker had moved between the rank of Sergeant and Detective making his service as a Sergeant non-continuous since his initial promotion in 1998.

Watch Commander's Daily Report (documentation) – Sergeant Blocker's Watch Commander's Daily Report, dated September 9, 2019, did not document the separation and monitoring of Officer Wheat, nor did it document who assumed the monitoring responsibility in relief of Sergeant Asawesna.

The above identified issues were brought to the attention of Captain Shah, who advised that this issue was addressed through a Notice to Correct Deficiencies and the generation of a SAI. The Commanding Officer of OSB and the Director of the OO concurred with this action. As such, I deem no further action is necessary.

BWV Activation – The investigation revealed that the BWV of Officers Moore, Lewis, Smith, Cintas, Barajas, A. Rodriguez, and C. Rodriguez, did not have a full two-minute buffer for this incident. An analysis was conducted by SOW area and identified that none of the identified officers had BWV buffering issues prior to the date of incident. This issue was brought to the attention of Captain Shah, who advised that this issue was addressed through divisional training and the generation of a SAI. The Commanding Officer of OSB and the Director of OO concurred with this action. As such, I deem no further action is necessary.

The Office of Operations conducted a random inspection of BWV's, for Officers Lewis, Smith, Cintas, Barajas, A. Rodriguez, and C. Rodriguez, from June 1, 2020, through June 30, 2020, for compliance of BWV policies. The results of the inspection indicated late activations and buffering concerns. These identified concerns will be handled through the issuance of an Employee Comment Sheet and the generation of a SAI for each officer.

The Office of Operations conducted a random inspection of BWV's, for Officer Moore, from June 1, 2020, through June 30, 2020, for compliance of BWV policies. The results of the inspection indicated no late activations and 100% compliance with BWV policies.

AUDIO/VIDEO RECORDINGS

Digital In-Car Video System (DICVS) – SOW patrol vehicles were equipped with DICVs at the time of the incident. No DICVs captured the incident.

Body Worn Video (BWV) – Officer Wheat's BWV was active during the entirety of the incident and captured the tactical element of taking the driver into custody, the shotgun manipulations, and the NTUD.

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The FID investigation revealed there was a total of 15 personnel at scene equipped with BWV. Officer Wheat's BWV was the only one which captured the NTUD incident.

Outside Video – No outside video surveillance captured the incident.

Respectfully,



MICHEL R. MOORE
Chief of Police

Date: _____

7.22.20